

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
Inbound Competitive Multi-Service Agreements with  
Foreign Postal Operators  
Deutsche Post – United States Postal Service  
Bilateral Agreement (MC2010-34)  
Negotiated Service Agreement

Docket No. CP2013-65

ORDER APPROVING ADDITION OF INBOUND COMPETITIVE  
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT (WITH DEUTSCHE POST)

(Issued June 26, 2013)

I. INTRODUCTION

The Postal Service seeks to include the inbound portion of a bilateral agreement with Deutsche Post (Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

---

<sup>1</sup> United States Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (Deutsche Post), June 6, 2013 (Notice). The Notice was filed pursuant to 39 C.F.R. § 3015.5.

## II. BACKGROUND

*Product history.* The Commission added Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) to the competitive product list in Order No. 546, following consideration of the Postal Service's request in Docket Nos. MC2010-34 and CP2010-95.<sup>2</sup> The Commission later established the Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV agreement (TNT Agreement) as the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.<sup>3</sup>

*Instant docket.* The Agreement in this docket concerns rates for Inbound Air Parcel Post and Inbound Surface Parcel Post (referred to in the Agreement as "inbound Air and Surface CP").<sup>4</sup> The Agreement is intended to take effect July 1, 2013. *Id.* at 2. It will remain in effect until terminated by either of the parties. Notice, Attachment 1 at 3. Either party may terminate the Agreement at the end of a calendar quarter without cause, upon 90 days' written notice. *Id.*

The Postal Service asserts that the Agreement fits within the draft Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product because it offers one of the combinations of inbound competitive services described therein. Notice at 3-4. The Postal Service contends that the inbound portion of the Agreement is substantially similar to the inbound portion of the baseline agreement in terms of the products being offered under the contract and the contract's cost characteristics. *Id.* at 5. It also states that the Agreement fits within the parameters outlined by Governors'

---

<sup>2</sup> Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

<sup>3</sup> Order No. 840, Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5.

<sup>4</sup> *Id.* at 3. Although the Notice states that the Agreement contains rates for inbound Express Mail Service (EMS), the Postal Service has clarified that no inbound EMS rates are included in this Agreement. See United States Postal Service Response to Chairman's Information Request No. 1, June 18, 2013, questions 1 and 2 (Response to CHIR No. 1).

Decision No. 10-3, which contains pricing formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. *Id.*

The Postal Service asserts that because both the Agreement and the baseline share similar cost and market characteristics, it “does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements.” *Id.* at 8. The Postal Service therefore contends that “[n]othing detracts from the conclusion” that these agreements are functionally equivalent in all pertinent respects. *Id.* at 8.

In Order No. 1740, the Commission provided public notice of the Postal Service’s filing, established a docket for consideration of the filing’s consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.<sup>5</sup>

One Chairman’s Information Request was issued with respect to this docket.<sup>6</sup> The Postal Service responded on June 18, 2013. See Response to CHIR No. 1.

### III. COMMENTS

The Public Representative filed comments.<sup>7</sup> No other comments were received. The Public Representative states that he has reviewed the Agreement and the supporting financial model and, based on that review, concludes that the Agreement is functionally equivalent to the baseline agreement and likely to generate sufficient revenue to cover its attributable costs. *Id.* at 3. He concludes that the Agreement differs from the baseline agreement in several respects, the most important of which

---

<sup>5</sup> Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Deutsche Post), June 7, 2013 (Order No. 1740).

<sup>6</sup> Chairman’s Information Request No. 1 and Notice of Filing Under Seal, June 14, 2013 (CHIR No. 1).

<sup>7</sup> Public Representative Comments on Postal Service Notice Concern Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (Deutsche Post), June 17, 2013 (PR Comments). The PR Comments were accompanied by a motion for acceptance of late filing. Motion of Public Representative for Late Acceptance of Reply Comments, June 17, 2013. That motion is granted.

concern the renegotiation of rates and the term of the Agreement. *Id.* at 3-4. He notes that the Agreement, unlike the baseline agreement, allows each party to renegotiate rates if the average weight per piece for either air or surface parcel post increases or decreases by 15 percent or more. *Id.* at 4. He also notes that the Agreement has an indefinite term, while the baseline agreement had a two-year term. *Id.* He argues that the combination of these two aspects of the Agreement may lead the Postal Service to believe that it is excused from filing notice with the Commission if the parties negotiate new rates. *Id.* Nevertheless, he concludes that the differences are not sufficient to alter his conclusion that the Agreement is functionally equivalent to the baseline agreement.

The Public Representative also states that the Postal Service has not provided information about the impact of the Agreement on the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product as a whole. *Id.* at 5. However, based on his conclusion that the Agreement is likely to generate sufficient revenues to cover attributable costs, he reasons that the Agreement “will not degrade the cost coverage of the product.” *Id.*

#### IV. COMMISSION ANALYSIS

The Commission’s responsibility with respect to an agreement of this type is to ensure that the Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of 39 C.F.R. §§ 3015.5 and 3015.7 and 39 U.S.C. § 3633.

*Functional equivalence.* The Public Representative notes that the Agreement differs from the baseline agreement in two important respects: the term of the Agreement and the ability to renegotiate rates based on changes in average weight per piece.

The Agreement would be the first agreement with an indefinite term included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The Commission has previously approved other international negotiated service agreements with indefinite terms as part of an existing product, even when the relevant baseline agreement had a fixed term. See, e.g., Docket

No. CP2013-49, Order Approving an Additional Global Reseller Expedited Package Contracts 1 Negotiated Service Agreement, February 26, 2013 (Order No. 1669); Docket No. CP2012-21, Order Approving an Additional Global Reseller Expedited Package Contract Negotiated Service Agreement, May 9, 2012 (Order No. 1337). Order No. 1669 suggested that an agreement with an indefinite term might, in some cases, be different enough from a baseline agreement with a fixed term to prevent the agreements from being considered functionally equivalent. *Id.* at 5. In that docket, the Commission found that given the limited number of GREP contracts and the presence of a pricing structure that satisfied 39 U.S.C. § 3633(a) counseled against a finding that the agreements were not functionally equivalent. Similarly, given the limited number of contracts in this product, as long as the Agreement and pricing structure continue to conform with the requirements of 39 U.S.C. § 3633(a), the Commission finds that an indefinite term does not preclude it from being included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

The ability to adjust rates to take into consideration changes in average weight per piece is an important aspect of the Agreement. The weight per piece affects the Postal Service's transportation costs – a significant driver of total costs. The ability to adjust rates to reflect those costs will help the Postal Service address changes in transportation costs over the term of the Agreement. However, the Postal Service will incur other costs in carrying out the Agreement. See Notice, Attachment 3 at 5 (filed under seal). The Agreement does not allow for rate adjustments to take into account changes in those other costs. Nonetheless, should the Agreement become unfavorable, the Postal Service may terminate the Agreement at the end of a calendar quarter with 90 days' written notice without cause. *Id.*, Attachment 1 at 3. As discussed below, the Commission will review the ongoing compliance of the Agreement with 39 U.S.C. § 3633(a) as part of its Annual Compliance Determination (ACD).

Notwithstanding these differences between the Agreement and the baseline agreement, the Commission concludes that the Agreement may be included within the

Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.

*Section 3633 considerations.* The Commission has reviewed the Notice, financial analyses provided under seal, and comments filed by the Public Representative in this proceeding. The penalty formulas for inbound Air Parcels shown in the Postal Service's workpapers appear to be inconsistent with the terms of the E-Package Group (EPG) Agreement cited in the Response to CHIR No. 1, question 3 at 4. The Commission recalculated the penalties for inbound Air Parcels in the workpapers in accordance with the penalty formulas in Article 6 and Annex 8 of Sub Agreement B of the EPG and finds that the Agreement should still cover its attributable costs (39 U.S.C. § 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)).<sup>8</sup> Because the Agreement is likely to cover its attributable costs, the Commission concludes that the Agreement is unlikely to impede the ability of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product as a whole to cover its costs.

Of particular importance given the indefinite term of the Agreement is the Postal Service's ability to terminate the Agreement without cause should the Agreement become unfavorable to the Postal Service. The Commission will also review the Agreement for continued compliance with 39 U.S.C. § 3633(a) as part of its ACD.

*Future rate changes.* The Public Representative expresses concern that the rate adjustment provision may be viewed as obviating the need for the Postal Service to file with the Commission a notice of price change under the Agreement. PR Comments at 4.

In Order No. 216, the Commission found that if price changes pursuant to an agreement's terms are determined by "objective, external events, which essentially

---

<sup>8</sup> This recalculation, based on the Response to CHIR No. 1, required additional time.

remove the price changes from the Postal Service's discretion," the Commission would allow for streamlined review and only require the Postal Service to file notice of such changes with the Commission.<sup>9</sup> However, if such price changes were not due to "objective, external events" and were instead, for example, negotiated by the Postal Service, the Commission would review whether these price changes satisfy 39 U.S.C. § 3633, 39 C.F.R. §§ 3015.5 and 3015.7. *Id.*

In this case, because the price changes contemplated by Article 27 of the Agreement will be the result of the Postal Service's negotiation efforts, such price changes are not due to "objective, external events." Accordingly, the Postal Service shall file a notice of any price change under the Agreement in accordance with the requirements of 39 C.F.R. § 3015.5.

*Scope of Agreement.* The Postal Service affirms that no EMS rates are included in the Agreement, and that the "rates included in Annex 1 for air parcels, SAL (economy) parcels, and surface parcels are the only inbound rates that are functional under this agreement." Response to CHIR No. 1, question 1 at 2. It states that it receives no inbound EMS volume from Deutsche Post. *Id.* Based on these assertions, the Commission concludes that the Agreement does not reflect an agreement between the parties to set inbound EMS rates at anything other than the "standard EMS rates announced for all countries not subject to a bilateral agreement." *Id.*, question 2, at 3. If, in the future, the Postal Service and Deutsche Post reach an agreement concerning inbound EMS rates or the Postal Service begins receiving inbound EMS volume from Deutsche Post at a rate other than the standard EMS rate, the Commission expects the Postal Service to file a notice in accordance with 39 C.F.R. § 3015.5 requesting approval of such new EMS rates.

*Follow-up submissions.* The Postal Service identifies July 1, 2013 as the effective date of the Agreement. If this date changes, the Postal Service shall promptly

---

<sup>9</sup> Docket No. CP2009-29, Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, May 15, 2009 (Order No. 216); see also Docket No. CP2009-48, Order Concerning Change in Prices in Accordance with Order No. 216, January 8, 2010 (Order No. 384).

notify the Commission of the revised effective date. The Postal Service also shall notify the Commission promptly of the termination of the Agreement by either party. In addition, within 30 days of termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2013-65 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.
2. The Postal Service shall notify the Commission if the effective date of the Agreement changes from the July 1, 2013 effective date described in its Notice.
3. The Postal Service shall notify the Commission of any price change as set forth in the body of this Order.
4. The Postal Service shall promptly notify the Commission of the termination of the Agreement.
5. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

By the Commission.

Shoshana M. Grove  
Secretary